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Beemer Sdn Bhd v Majlis Bandaraya Petaling Jaya

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HIGH COURT (SHAH ALAM) — APPLICATION FOR JUDICIAL REVIEW NO 25–26–07 OF 2014
AZIMAH OMAR JC
14 AUGUST 2015

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Civil Procedure — Judicial review — Certiorari and mandamus — Whether municipal council's decision to refuse renewal of trade licence to imported cars dealer improper, invalid and unlawful — Whether council took into account irrelevant considerations and failed to take into account relevant considerations in making decision — Whether certiorari should issue to quash council's decision followed by mandamus directing it to grant reliefs sought by dealer — Whether council's perverse decision deprived dealer of various legitimate expectations

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The applicant was in the business of selling a variety of new and pre-owned imported cars. It initially operated its business at 64, Jalan Universiti, Petaling Jaya, Selangor ('old premises'). When the applicant moved its business to another premises ('the new premises'), three lots away along the same road, it applied to the respondent ('MBPJ') for conversion of land use on the new premises from 'residential' to 'commercial' (as it had done with the old premises). MBPJ rejected the application on the ground the application conflicted with the local plan ('RTPJ 1'). The applicant's appeal against that decision to the Selangor State Appeal Board ('appeal board') was dismissed. Upon a judicial review application filed by the applicant, the High Court, noting that the new premises could not be preserved as 'residential' given the fact the whole of Jalan Universiti had come under mixed development of various commercial activities including car showrooms, quashed the appeal board's decision and directed it to rehear the applicant's appeal. On rehearing the appeal, the appeal board decided in the applicant's favour and issued an order ('the order') containing various directions including one that the applicant's trade licence be amended to reflect the address of the new premises. When the applicant applied for the address stated in its trade licence to be changed to the new premises, MBPJ refused the application on the grounds: (a) the applicant's showcasing of different makes of cars apart from 'its type' of car was an activity that conflicted with the terms of the order, which, inter alia, stipulated that 'Premis ini hendaklah digunakan semata-mata untuk mempamerkan kereta-kereta jenisnya untuk jualan tetapi bukan untuk mengadakan Dewan pameran kereta berbagai kereta lain'; and (b) the applicant was not an authorised automobile marketing agent as was required under the RTPJ 1'. In the instant judicial review application, the applicant said MBPJ's rejection of its application was perverse and unlawful as it taken into account

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irrelevant considerations and failed to take into account relevant considerations in arriving at its decision.

Held:

(1) MBPJ had improperly considered misconceived facts that it should not have considered and failed to consider facts it should have considered in reaching its decision. MBPJ's decision in rejecting the applicant's application was improper, invalid and unlawful. It had clearly committed errors of law in refusing to accede to the applicant's request to comply with the order of the appeal board and in refusing to transfer the applicant's trade licence issued for the old premises to the new premises (see paras 45 & 58).

(2) The applicant was clearly a dealer in imported cars of various brands. It was well within MBPJ's knowledge that the applicant's business for the last five years was not limited to BMWs or any specific manufacturer. Beemer was merely a nickname for automobile products of BMW. It did not dictate the status of a seller, whether they were authorised dealers or otherwise. MBPJ's isolated reading of one condition out of the mass of other contents and directions within the same order was flawed, self-contradictory and illogical. A sensible reading of the order should be that all of the conditions from top to bottom must be coherent, consistent and logical. A proper reading of the order would be that the 'type' of cars referred to was not limited to any specific manufacturer but generally to imported cars (see paras 29, 31–32, 37 & 39).

(3) Since the inception of the applicant's business in 2005 and even until the granting of the order, there was never a single utterance of any requirement that the applicant had to be an authorised automobile agent. The order did not stipulate such a requirement, neither was there any mention of it under the RTPJ 1 local plan. It seemed that the 'requirement' was arbitrarily concocted by MBPJ devoid of any legal support or justification (see paras 41–43).

(4) Owing to MBPJ's wrongful administrative decisions, the applicant was deprived of many legitimate expectations including that its interests under the order would be protected, that there would be proper and fair conformity with and performance of the order by MBPJ and that the applicant would be allowed to pay for renewal of its trade licence (see paras 47–50).

[Bahasa Malaysia summary

Pemohon adalah dalam perniagaan menjual pelbagai kereta import baru dan pra-milik. Ia pada mulanya mengendalikan perniagaannya di 64, Jalan Universiti, Petaling Jaya, Selangor ('premis lama'). Apabila pemohon memindahkan perniagaannya ke premis lain ('premis baru'), tiga lot dari jalan

yang sama, ia memohon kepada responden ('MBPJ') untuk penukaran penggunaan tanah di premis baru dari 'kediaman' kepada 'perdagangan' (seperti yang dilakukan dengan premis lama). MBPJ menolak permohonan atas alasan permohonan bercanggah dengan rancangan tempatan ('RTPJ 1'). Pemohon merayu terhadap keputusan itu kepada Lembaga Rayuan Negeri Selangor ('lembaga rayuan') telah ditolak. Setelah permohonan semakan kehakiman difailkan oleh pemohon, Mahkamah Tinggi, mencatatkan bahawa premis baru tidak dapat dikekalkan sebagai 'kediaman' memandangkan seluruh Jalan Universiti telah diletakkan di bawah pembangunan bercampur pelbagai aktiviti komersial termasuk bilik pameran kereta, membatalkan keputusan lembaga rayuan itu dan mengarahkan ia untuk mendengar semula rayuan pemohon. Pada mendengar semula rayuan itu, lembaga rayuan membuat keputusan yang menyebelahi pemohon dan mengeluarkan perintah ('perintah') yang mengandungi pelbagai arah termasuk lesen perdagangan pemohon dipinda untuk menunjukkan alamat premis baru. Apabila pemohon memohon untuk alamat yang dinyatakan dalam lesen perdagangannya untuk ditukar kepada premis baru, MBPJ menolak permohonan atas alasan: (a) pemohon mempamerkan berbagai jenis kereta selain 'its type' kereta adalah satu aktiviti yang bercanggah dengan syarat-syarat perintah, yang, antara lain, menetapkan bahawa 'Premis ini hendaklah digunakan semata-mata untuk mempamerkan kereta-kereta jenisnya untuk jualan tetapi bukan untuk mengadakan Dewan pameran kereta berbagai kereta lain'; dan (b) pemohon bukanlah ejen pemasaran kereta yang dibenarkan seperti yang dikehendaki di bawah RTPJ 1. Dalam permohonan semakan kehakiman ini, pemohon menyatakan penolakan MBPJ adalah tidak munasabah dan bersalahan dengan undang-undang kerana ia telah mengambil kira pertimbangan yang tidak relevan dan gagal untuk mengambil pertimbangan yang relevan dalam mencapai keputusannya.

Diputuskan:

(1) MBPJ telah secara tidak wajar mempertimbangkan fakta salah tanggap yang tidak sepatutnya dipertimbangkan dan gagal untuk mempertimbangkan fakta dalam membuat keputusannya. Keputusan MBPJ dalam menolak permohonan pemohon adalah tidak wajar, tidak sah dan bersalahan dengan undang-undang. Ia dengan jelas telah melakukan kesalahan undang-undang dalam menolak untuk akur dengan permintaan pemohon untuk mematuhi perintah lembaga rayuan itu dan berhubung keengganan memindahkan lesen perdagangan pemohon untuk dikeluarkan untuk premis lama ke premis baru (lihat perenggan 45 & 58).

(2) Pemohon adalah jelas pengedar kereta import pelbagai jenama. Ia adalah di dalam pengetahuan MBPJ bahawa perniagaan pemohon untuk lima tahun lepas tidak terhad kepada BMW atau apa-apa pengeluar tertentu. Beemer hanyalah semata-mata nama samaran untuk produk automobil

BMW. Ia tidak menentukan status penjual, sama ada mereka adalah pengedar berlesen ataupun sebaliknya. Bacaan terpencil MBPJ terhadap satu syarat pengeluaran kandungan dan arahan lain dalam perintah yang sama adalah cacat, bercanggah dengan sendirinya dan tidak masuk akal. Bacaan wajar perintah sepatutnya adalah kesemua syarat daripada atas hingga ke bawah hendaklah jelas, konsisten dan logik. Bacaan perintah yang sepatutnya adalah bahawa 'type' kereta yang dirujuk tidak terhad kepada apa-apa pengeluar tertentu tetapi secara amnya kereta import (lihat perenggan 29, 31–32, 37 & 39).

(3) Sejak permulaan perniagaan pemohon pada tahun 2005 dan sampai pemberian perintah, tidak pernah ada lafaz tunggal apa-apa kehendak bahawa pemohon terpaksa menjadi ejen automobil yang dibenarkan. Perintah tidak menetapkan keperluan itu, dan tiada juga apa-apa sebutan di bawah rancangan tempatan RTPJ 1. Ia seolah-olah bahawa 'requirement' telah sewenang-wenangnya direka oleh MBPJ tanpa apa-apa sokongan undang-undang atau justifikasi (lihat perenggan 41–43).

(4) Disebabkan keputusan pentadbiran salah MBPJ, pemohon telah dinafikan pelbagai jangkaan yang sah termasuk kepentingan di bawah perintah akan dilindungi, bahawa akan ada pematuhan yang betul dan adil dengan dan pelaksanaan perintah oleh MBPJ dan pemohon akan dibenarkan membayar untuk pembaharuan lesen perdagangannya (lihat perenggan 47–50).]

Notes

For cases on judicial review in general, see 2(3) *Mallal's Digest* (5th Ed, 2015) paras 5572–5612.

Cases referred to

KPMG Consulting (ASPAC) Sdn Bhd v YB Menteri Sumber Manusia Malaysia & Ors [2004] 5 MLJ 26, HC (folld)

Lee Hay v Yang Di Pertua Majlis Daerah, Hulu Langat & Anor [1998] MLJU 269; [1998] 5 CLJ 367, HC (refd)

Pengarah Tanah Dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135, FC (refd)

Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan Bhd v Majlis Perbandaran Pulau Pinang [1996] MLJU 300; [1996] 3 CLJ 335, CA (refd)

Legislation referred to

Companies Act 1965

Ringo Low (Ting Lee Ping with him) (Ringo Low & Partners) for the applicant.

Choy Pau Yow (Nurliza bt Shafien with him) (Kamaruzaman Arif Amran & Chong) for the respondent.

Azimah Omar JC:

BACKGROUND FACTS

[1] The present application for judicial review for what it is worth, amidst its colourful history of previous judicial review and appeals to the municipal appeal board, is simply a dispute on the proper reading of the municipal appeal board's decision and order with regards to the applicant's application allegedly in furtherance of the same order.

[2] This court shall not delve too deeply on the previous proceedings at the appeal board with regard to the applicant's previous application for judicial review in Kuala Lumpur High Court Suit No R2–25–448 of 2010 and only would refer to the facts of these previous proceedings as and when it is necessary in determining the appropriate interpretation as well as the most sensible reading of the latest appeal board decision, which is the subject of the present application.

[3] The applicant, a company by the name of Beemer Sdn Bhd is a private limited company incorporated in Malaysia under the Companies Act 1965 and carries on the business of selling new and pre-owned imported cars.

[4] The respondent is the municipality of the district of Petaling Jaya ('MBPJ').

[5] The applicant initially operates its business at No 64, Jalan Universiti, Petaling Jaya, Selangor ('old premise') circa 2005. Business ran seamlessly with full approval by MBPJ in respect of the business licenses and also the land use (which MBPJ approved to be converted from 'residential' to 'commercial'). The applicant's license to trade is registered with the old premise as its place of operation and the license was consistently paid, renewed and remains valid until the year 2013 right before MBPJ refused to accept payment for renewal (see exh BSS11 of encl 3).

[6] The applicant's lease of the old premise expires on 31 July 2007, and thus, the applicant has moved the same business to No 58, Jalan Universiti, Petaling Jaya, Selangor ('new premise'). The new premise is merely and only three lots away from the initial old premise along the same road.

[7] Indeed, Jalan Universiti is one of the roads classified as 'Kawasan Perdagangan Terhad' or limited commercial area under the local plan, Rancangan Tempatan Petaling Jaya 1 (Pengubahan) ('RTPJ 1') which was *gazetted* vide the Selangor State Gazette No 1542 on 14 June 2007. Thus, both the old and new premises are now subject to the mass of conditions and restrictions of the RTPJ 1.

[8] This court will now briefly allude to the administrative decision which forms the cause of action of the present dispute. In legitimising the shift of premises, the applicant has previously applied for a conversion of land use on the new premise from 'residential' to 'commercial' as it has similarly done with the old premise.

[9] However, MBPJ has rejected this application vide the issuance of Form C(2) dated 8 October 2010 itemises its ground of rejection as follows (see exh BSS12, encl 10):

i) Bercanggah dengan Rancangan Tempatan Petaling Jaya 1.

a. Hanya bangunan kediaman 2 tingkat sediada atau yang telah siap dibina sebelum 13.3.2003 layak untuk memohon bagi menukar kegunaan bangunan secara setahun ke setahun untuk menjalankan aktiviti perdagangan terhad.

b. Bangunan kediaman 2 dan 3 tingkat yang dibina selepas tarikh berkenaan tidak layak memohon menukar kegunaan bangunan secara setahun ke setahun bagi menjalankan aktiviti perdagangan terhad.

ii) Mendapat bantahan keras dari penduduk sekitar.

Translation:

i) Conflicting with Rancangan Tempatan Petaling Jaya 1.

a. Only 2-storey residential building existing or completed before 13.3.2003 are eligible to apply for a conversion of the use of building on a yearly basis to conduct limited commercial activities.

b. 2 or 3-storey residential buildings which are built after the said date are not eligible to apply for a conversion of the use of building on a yearly basis to conduct any limited commercial activities.

ii) Receiving strong objections from neighbouring residents.

[10] Now, as far as the present application for judicial review is concerned, what was made aware to the applicants, on its supposed non-compliance of RTPJ 1, only the above two reasons on the type of residential building were MBPJ's sole concern.

[11] Of course, this decision was appealed against to the Selangor State Appeal Board ('appeal board'), and this appeal was subsequently dismissed on 18 August 2010 upholding Form C(2) above on the alleged non-compliance of RTPJ 1, particular on the type of building already erected on the new premise (see para 13 of exh BSS1 of encl 3).

[12] This court must highlight here that it is satisfied that there was absolutely no mention or contention at all about a supposed requirement of the applicant to be an 'authorised marketing agent' as one of the non-compliances against the RTPJ 1. This is the status quo of the alleged non-compliance.

[13] Entailing the dismissal of the appeal, the applicant filed for judicial review which ultimately was decided in the applicant's favour. The High Court then has quashed the appeal board's decision, and directed for the application to be reheard by the same appeal board (see exh BSS1 of encl 3 for the grounds of decision in Kuala Lumpur High Court Suit No R2–25–448 of 2010).

[14] The High Court's decision in the first judicial review is motivated by the following observations:

> From the factual matrix of the present case … it clearly shows that the whole of *Jalan Universiti* is a mixed development of various commercial activities *with car show rooms approved* for various buildings located on the same road … For that matter the old premises which was *just three lots away was approved for the same in the year 2005*. Within immediate vicinity of the new premises, to the left is a building erected on premises No 60 and No 62 … which I am sure is not a residential building. From the look of the building it appears to be more of an exhibition centre. No 54 to the right of the new premises is a furniture exhibition … In the circumstances, *it is quite difficult to imagine how the new premises could be preserved as 'residential' especially when a new fly over was erected right in front of it*. (Emphasis added.)

RTPJ 1 still allows erection and operation of car showrooms

[15] It is absolutely pertinent to note from this judgment even since then, that although RTPJ 1 expressly disallows car showrooms within limited commercial areas, that MBPJ still approves and allows the erection and operation of car showrooms. Thus, even with the express restriction of RTPJ 1 it is apparent that there must be an exception to the restriction. The remaining question following this exception what is the qualification to this exception? This court shall delve into this query later in this judgment.

[16] Initially the respondent has filed an appeal to the Court of Appeal via Civil Appeal No W-02–2047 of 2011 however this appeal was later withdrawn by the respondent and thus, the High Court decision is maintained.

[17] Now, in compliance with the High Court's decision above, the applicant's appeal was reheard at the appeal board. To which, the appeal board had a change of hearts and instead decided in favour of the applicant. The interpretation of this order by the appeal board ('order') is the subject of this dispute (see exh BBS3 of encl 3 for the order). Since this order is the subject of the present dispute, it is only fitting that the relevant portion of the order is reproduced here:

> Dan setelah mendengar hujah lanjutan pihak Perayu dan pihak Responden mengenai *aktiviti penjualan kereta yang telah dengan sahnya sebelum ini serta pengakuannya untuk meneruskan aktiviti yang sama* DAN *aktiviti ini boleh dibenarkan di bawah kelas kegunaan* yang dibenarkan mengikut Garispanduan Kawalan Pembangunan Rancangan Tempatan, Petaling Jaya (Pengubahan 1) No. Warta 1542 bertarikh 14 Januari 2007 MAKA ADALAH DIPERINTAHKAN BAHAWA Kebenaran Merancang bolehlah diberi dengan syarat:
>
> a. Premis ini hendaklah digunakan semata-mata untuk mempamerkan kereta-kereta jenisnya untuk jualan tetapi bukan untuk mengadakan Dewan pameran kereta berbagai kereta lain;
>
> b. Membayar cukai taksiran berasaskan premis komersial, selagi lesen itu sah;
>
> c. membayar cukai tanah tambahan berasaskan tanah itu bukan lagi tanah untuk kediaman tetapi sebagai tapak komersial (menurut Pekeliling Pengarah Tanah dan Galian Selangor Bil. 5/2007 bertarikh 29 Mei 2007;
>
> d. Pembetulan dan Pindaan pada alamat lessen Tred Perniagaan dan perindustrian 2013 ... hendaklah dibuat daripada alamat No. 64 kepada No. 58, Jalan Universiti, Petaling Jaya;
>
> e. Lesen semasa akan tamat pada 31 Disember 2013
>
> f. Pihak Perayu hendaklan Tiga bulan sebelum lesen itu tamat tempoh sah lakunya untuk memohon pembaharuan;
>
> g. Dan lain-lain syarat yang boleh dikenakan mengikut Lesen Tred Perniagaan dan Perindustrian ...;
>
> DAN Penolakan Kebenaran Merancang bertarikh 8 Januari 2010 hendaklah dibatalkan dan *Kebenaran Merancang dikeluarkan* sehingga 31 Disember 2013 DAN AKHIR SEKALI TIADA PERINTAH TERHADAP KOS. (Emphasis added.)

There is still no mention of the requirement of being an 'authorised marketing agent' even in the order

[18] Again, similarly at this juncture, there is no specific mention of any requirement to become an authorised automobile marketing agent as one of the requisites to operate a car showroom in Jalan Universiti.

[19] Following this order, the applicant of course sought for the due compliance and performance of the order against MBPJ. The applicant applied to amend or to transfer the trade license from the old premise to the new premise. This was applied for vide numerous issuance of letters by the applicant. However, against all of these applications, the respondent either has refused or failed to conform to the order.

Sudden emergence of a new requisite of being an 'authorised automobile agent'

[20] It transpired that there were a series of correspondences and internal Development Committee Meetings in MBPJ and also an investigation which led to MBPJ's final decision to decline the application to transfer and/or amend the trade license to the new premise.

[21] Ultimately, in view of the investigation report by the Enforcement and Safety Department dated 21 August 2013 ('investigation report') MBPJ has decided in its development committee meeting on 23 September 2013 to reject the applicant's application on the grounds that:

> Mesyuarat mengambil maklum hasil siasatan oleh Jabatan Penguatkuasaan dan Keselamatan mendapati premis sedang menjalankan aktiviti mempamer dan menjual pelbagai jenis kereta. *Surat pengesahan bahawa pengusaha dilantik oleh pengeluar sebagai agen pemasaran tidak diperolehi.*
>
> Sehubungan dengan itu, Mesyuarat membuat keputusan permohonan ini ditolak kerana bercanggah dengan Pengubahan 1 RTPJ 1 di mana aktiviti semasa yang dijalankan *bukan sebagai agensi pemasaran yang dilantik oleh pengeluar.* (Emphasis added.)

[22] On these two grounds, firstly, that the applicant operates a car showroom for a variety of cars and not the applicant's 'type' of car and secondly, that the applicant is not an authorised automobile agent, MBPJ decided to reject the application. The propriety of this decision on these grounds are questioned.

[23] Before this court determines the propriety of the above rejection, this court would first briefly allude to the principles of law relevant to the present judicial review.

[24] There is little conflict on the applicable principles in the present case. All that is vehemently argued about is the application of the facts of the present case to these principles.

WAS MBPJ'S DECISION IN REJECTING THE APPLICANT'S APPLICATION A VALID AND PROPER ADMINISTRATIVE DECISION?

[25] The applicant's case is simply that firstly, MBPJ has improperly considered irrelevant considerations and failed to consider relevant considerations in reaching its decisions. The applicant refers to the decision in the case of *Pengarah Tanah Dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135:

> On principle and authority, the discretionary power to impose such conditions 'as they think fit' is *not an uncontrolled discretion to impose whatever conditions*. In exercising their discretion, the planning authorities must ... *have regard to all relevant considerations and disregard all improper considerations and they must produce a result which does not offend against common sense*'; or to repeat Lord Denning MR's words in *Pyx Granite Co Ltd ... Although the planning authorities are given very wide powers to impose 'such conditions as they think fit' nevertheless the law says that those conditions to be valid, must be fairly and reasonably relate to the permitted development. The planning authorities are not at liberty to use these powers for an ulterior object, however desirable that object may seem to them to be in the public interest.* (Emphasis added.)

[26] This court is also guided by the case of *KPMG Consulting (ASPAC) Sdn Bhd v YB Menteri Sumber Manusia Malaysia & Ors* [2004] 5 MLJ 26:

> ... the court can interfere with the Minister's decision if he ... has *taken into consideration matters which he ought not have taken into account or vice versa*; or has otherwise gone wrong in law. (Emphasis added.)

(See also *Lee Hay v Yang Di Pertua Majlis Daerah, Hulu Langat & Anor* [1998] MLJU 269; [1998] 5 CLJ 367.)

First consideration: The alleged fact that the applicant operates a showroom showcasing a variety of brand of cars in the new premises

[27] It is MBPJ's tenuous contention that the operation of this showroom fundamentally breaches and detracts from the set conditions of the Order, particularly on the condition of:

> Premis ini hendaklah digunakan semata-mata untuk mempamerkan kereta-kereta jenisnya untuk jualan tetapi bukan untuk mengadakan Dewan pameran kereta berbagai kereta lain;

[28] As per the investigation report, indeed it was found that the applicant sells and showcases a variety of brand of automobiles in the new premise (see exh MBPJ13, encl 7):

> Syarikat tersebut sudah beroperasi selama 5 tahun dan menjalankan menjual *kereta*

import seperti jenama Toyota, Mercedes, AUDI, Porche BMW dan lain lain jenama lagi ... (Emphasis added.)

[29] There are three facts essential to be extracted and understood from the content of the report above:

(a) firstly, the 'type' of cars that the applicant deals in are 'kereta import' or imported cars of various brands;

(b) secondly, the applicant has been adopting this very same business model in dealing imported cars since the last five years; and

(c) thirdly, it is well within the knowledge of MBPJ that it knew of the applicant's business model in dealing with imported cars for the last five years.

[30] The reason this court extrapolates the above facts are relevant to the proper and sensible reading of the order by the appeal board. Of course, in ascertaining the truest intent of the appeal board, the order must be read holistically and not in demarcated parts.

[31] Literally per se, the passage of the order which MBPJ relies upon might as well meant what MBPJ argue to mean. However, this is merely an inference drawn on an isolated reading of one condition out of the mass of other contents and directions within the same order.

[32] It goes without saying that a sensible reading of the order should be that all of the conditions from top to bottom must be coherent, consistent and logical. This court shall refer to two distinct passages from the order which must be coherent and linear to each other.

First passage:

aktiviti penjualan kereta *yang telah dengan sahnya sebelum ini* serta pengakuannya untuk meneruskan aktiviti yang sama DAN *aktiviti ini boleh dibenarkan di bawah kelas kegunaan* yang dibenarkan mengikut Garispanduan Kawalan Pembangunan Rancangan Tempatan, Petaling Jaya (Pengubahan 1) No. Warta 1542. (Emphasis added.)

Second passage:

Premis ini hendaklah digunakan semata-mata untuk mempamerkan kereta-kereta jenisnya untuk jualan tetapi bukan untuk mengadakan Dewan pameran kereta berbagai kereta lain.

[33] In simple terms, the first passage above refers to the approved trading of cars activities in the past (which logically refers to the approval of the trade license in the old premise) where the applicant has and continued to deal in

imported cars since five years ago and that this trading of imported cars is also subsequently approved and allowed under RTPJ 1, so long as the same business is conducted.

[34] The second passage simply stipulates that the applicant is limited to showcase and deal only with cars of its 'type'.

[35] Now, MBPJ sought to argue that the 'type' of car referred to in the second passage pertains to one specific manufacturer and maker that the applicant is allowed sell and showcase. However, it is interesting to note that MBPJ has never identified the exact brand that it refers to. It was not mentioned at all in any of MBPJ's affidavits. However, given the facts of the case, it is safe to assume that MBPJ assumed that owing to the name of the applicant, Beemer Sdn Bhd, that the 'type' of car that the applicant is limited to showcase and sell are cars manufactured by BMW. Thus, allegedly, in having other brand name cars in its premise breaches the order and justifies its refusal and rejection.

[36] However, there are two reasons in which this court finds it difficult to agree and follow with this contention.

[37] Firstly, the applicant's portfolio clearly is a dealer in imported cars. The investigation report clearly acknowledges and admits this. It is well within the knowledge of MBPJ that the applicant's modus operandi of business or 'type' of business is not limited to BMWs or any specific manufacturer per se since five years ago. Beemer is merely a nickname to automobile products of BMW. It does not at all dictate the status of a seller either they are authorised dealers or otherwise.

[38] Secondly, if in case this court agrees with the interpretation by MBPJ, the order would be self-contradictory and illogical. The contradiction is that, on one hand, the first passage of the order has already approved and acknowledged the applicant's known business model in dealing with imported cars of various manufacturers since five years ago to be within the guidelines of RTPJ 1, but on the other hand, the second passage suddenly limits the applicant's business model to deal with only one manufacturer as opposed to the earlier approval for imported cars in general. This reading of the order is utterly flawed and verily self-contradictory.

Proper reading of the order

[39] Thus, the proper reading of the order which would allow the two passages jive in well together would be that, the 'type' of cars referred to in the second passage is NOT limited to any specific manufacturer, but generally to

imported cars. This reading would render a logical and sensible symbiosis of the approved business of the applicant in the pass in dealing with imported cars in the past (as per the first passage) and the approved 'type' of cars (as per the second passage).

[40] Thus, it is this court's considered view that MBPJ has considered a misconceived fact which it ought not to consider in reaching its decision.

Second consideration: The alleged requirement of being an authorised automobile agent

[41] The other consideration that MBPJ considered and vigorously argued over is the requirement of being an authorised automobile agent. Again, this court wholly disagrees with this contention.

[42] Firstly, it is simply because there was not a single utterance of such requirement since the inception of the applicant's business in 2005 even until the granting of the order. The order clearly does not stipulate such a requirement to be followed by the applicant. In fact, the only grounds of non-compliance (which was later abandoned by MBPJ) under Form C(2) is only pertaining the erected building on the new premise. This remained to be the status quo of MBPJ's reason to reject even up until the order was granted by the appeal board.

[43] Secondly, quite astonishingly, this requirement seems to be merely an arbitrary requirement devoid of any legal support or justification. Albeit that learned counsel for MBPJ vehemently argued that the requirement is stipulated under RTPJ 1, there is not a single mention of such requirement under the same local plan. It must be noted that the counsel for MBPJ has not even exhibited any proof of such requirements under RTPJ 1. Not only that, this court has closely examined RPTJ 1 in totality together with RTPJ 1 (*Pengubahan*) and is still unable to find any stipulations of such requirement. It seems as though MBPJ has concocted this requirement arbitrarily out of thin air.

[44] Thus, again it is this court's considered view that MBPJ has considered a misconceived fact which it ought not to consider in reaching its decision.

The court's finding

[45] In light of the all of the above discussions, it is this court's considered view that MBPJ has indeed improperly considered misconceived facts that should not have been considered and failed to consider facts which should have

been considered in reaching it decision. Therefore, indeed MBPJ's decision in rejecting the applicant's application is improper, invalid and unlawful.

HAS THE ADMINISTRATIVE DECISIONS OF MBPJ DEPRIVED THE APPLICANT OF ITS LEGITIMATE EXPECTATIONS?

[46] The circumstances which raises a legitimate expectation has been succinctly encapsulated in the case of *Syarikat Bekerjasama-sama Serbaguna Sungai Gelugor Dengan Tanggungan Bhd v Majlis Perbandaran Pulau Pinang* [1996] MLJU 300; [1996] 3 CLJ 335 at pp 379–381:

> The phrase 'legitimate expectation' may be used in various distinct senses. It may be used to denote *a substantive right which is established when there is a clear representation by the administrator or public body which could be reasonably relied upon by the claimant.*
>
> Employed in this sense, the doctrine is akin to an estoppel.
>
> *Secondly,* legitimate expectation arises not because the claimant asserts any specific right to a benefit but rather because *his interest in it is one that the law holds protected by the requirements of procedural fairness.*
>
> In this sense, the law recognises that the interest cannot properly be withdrawn or denied without the claimant being given an opportunity to comment and without the authority communicating rational grounds for any adverse decision.
>
> *Thirdly,* the concept of legitimate expectation may be used to refer to the *fair procedure itself*. In other words, it is contended that the claimant has a *legitimate expectation that the public body will act fairly towards him.*
>
> *The final category* of legitimate expectation encompasses those cases in which it is held that a particular procedure, not otherwise *required by law in the protection of an interest*, must be followed consequent upon some specific promise or practice. (Emphasis added.)

[47] Safe to say that owing to MBPJ's wrongful administrative decisions, that the applicant was deprived of a multitude of legitimate expectations.

[48] Firstly, the applicant's legitimate expectation of a proper and fair conformity and performance of the order by the appeal board is deprived when MBPJ wrongfully refused and failed to approve the applicant's application for the amendment/shift of the trade license to the new premise. It is thoroughly unfair that MBPJ adds an utterly foreign requisite from the order to be complied by the applicant.

[49] Secondly, the applicant's legitimate expectation of its interest under the order is also deprived. The applicant's interest is protected by the order and through the same order, protected by the law. Through the operation of the law the applicant has the legitimate expectation that the order is lawfully abide by and performed by MBPJ.

[50] Thirdly, the applicant's legitimate expectation to be allowed to pay for renewal of the trade license has been unlawfully deprived when MBPJ refused to accept payment on the ground that the applicant's business is in contravention of the RTPJ 1. It is within the applicant's rights to be allowed to pay for renewal as the applicant's business in operating the showroom is a valid business conforming to the conditions of the order. Thus, this interest is protected by the law.

The court's finding

[51] Thus, it is this court's considered view that indeed the applicant has been denied of its legitimate expectations by MBPJ.

MISCELANEOUS

[52] One of the more obscure reasons that MBPJ has rejected all of the applicant's application for compliance of the order is that the applicant has yet to apply and obtain a planning permission from MBPJ.

[53] The applicant in turn argued that this rejection is unlawful on the ground that the order has already granted the applicant a planning permission based on this excerpt of the order:

> DAN Penolakan Kebenaran Merancang bertarikh 8 Januari 2010 hendaklah dibatalkan dan *Kebenaran Merancang dikeluarkan sehingga 31 Disember 2013* DAN AKHIR SEKALI TIADA PERINTAH TERHADAP KOS.

[54] However, this court does not follow the applicant's contention here simply for the fact that the contention is not an accurate reading of the order. The preceding paragraph of the same order also reads:

> ADALAH DIPERINTAHKAN BAHAWA *Kebenaran Merancang bolehlah diberi* dengan syarat ...

[55] Clearly, the above passage indicates that the planning permission has not yet been granted and is still subject to conditions before it can be granted. This is particularly with the usage of the excerpt 'bolehlah diberi dengan syarat ...'.

[56] Nevertheless, it is also this court's considered view that this contention is really a non-issue as the grounds of MBPJ's rejection to disallow the applicant's entire operations was on the operation of the showroom and the alleged requirement of the applicant to be an authorised automobile agent (to which this court entirely disagrees).

[57] Furthermore, the applicant has complied to all of the conditions set in the order and should definitely be allowed and granted planning permission by MBPJ.

THE COURT'S DECISION AND DIRECTIONS

[58] In light of all of the above findings, it is this court's decision that the respondent has clearly committed errors of law in refusing to accede to the applicant's request of compliance with the order of the appeal board and also in refusing the transfer of the applicant's 'Lesen Tred Perniagaan dan Perindustrian 2013 Ruj, SN: LPN 003752' issued for the old premises (No 64) to the new premises (No 54). The respondent has clearly misconstrued the appeal board's decision and also has taken into account irrelevant considerations.

[59] This court hereby grants the following orders:

(a) certiorari:

(i) certiorari to quash MBPJ's decision to refuse the applicant's payment to renew the Trade Licence Ruj: SN:LPN 003752; and

(ii) certiorari to quash MBPJ's decision to refuse the applicant's application to amend/shift the trade license to the new premise;

(b) mandamus:

(i) mandamus to direct MBPJ to duly and accordingly issue planning permission to the applicants;

(ii) mandamus to direct MBPJ to carry out the correction and amendment on the address registered on the trade license from No 64 to No 58, Jalan Universiti, Petaling Jaya, Selangor; and

(iii) mandamus to direct MBPJ to allow the applicant to pay for and renew its trade license for subsequent years.

ON THE ISSUE OF COSTS

[60] Having heard the submissions from the counsels for the applicant and the respondent, this court hereby orders the respondent to pay the applicant a sum of RM15,000 in costs.

Order accordingly.

Reported by Ashok Kumar